

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

SAFECO INSURANCE COMPANY OF
AMERICA,

Plaintiff,

v.

PETER PORIETIS, an individual; SPRUCE
REAL ESTATE, LLC, a Washington limited
liability company; and RUSSELL
MERRIFIELD JR., an individual,

Defendants.

No.:

COMPLAINT FOR DECLARATORY
JUDGMENT

Plaintiff Safeco Insurance Company of America (“Safeco”) hereby brings this
Complaint for Declaratory Judgment against Defendants Peter Porietis, Spruce Real Estate,
LLC, and Russell Merrifield Jr (collectively “Defendants”, and individually “Defendant”).

I. THE PARTIES

1.1 Safeco is a company organized under the laws of the State of New Hampshire
with its principal place of business located at 175 Berkeley St., Boston, Massachusetts,
02116.

1.2 Defendant Peter Porietis is an individual residing in Pierce County,
Washington and domiciled in the State of Washington.

1.3 Defendant Spruce Real Estate, LLC is a Washington limited liability company, with its principal place of business in Pierce County, Washington.

1.4 Defendant Russell Merrifield Jr. is an individual residing in Pierce County, Washington and domiciled in the State of Washington.

II. JURISDICTION AND VENUE

2.1 Safeco incorporates by reference all allegation set forth in paragraphs 1.1 through 1.4 as if fully set forth herein.

2.2 This Court has jurisdiction pursuant to 28 U.S.C. § 1332(a)(1) because the amount in controversy exceeds \$75,000, exclusive of interest and costs, and the plaintiff is a citizen of different states than all defendants.

2.3 Venue is proper pursuant to 28 U.S.C. §§ 1391(b) because a substantial part of the events or omissions giving rise to the Plaintiff's claims occurred in this judicial district.

III. FACTS

3.1 Safeco incorporates by reference all allegation set forth in paragraphs 1.1 through 2.3 as if fully set forth herein.

A. The Underlying Lawsuit

3.2 This declaratory judgment action involves a dispute as to liability insurance coverage for an underlying lawsuit filed by Defendant Merrifield in Pierce County Superior Court Cause No. 21-2-08526-3 (the “Underlying Lawsuit”).

3.3 In the Underlying Lawsuit, Defendant Merrifield’s Complaint for Damages, filed on or about December 1, 2021, a copy of which is attached as Exhibit “A” (the “Complaint”), at paragraph 3.2 alleges that Peter Porietis, Angela Porietis, and Spruce Real Estate, LLC (“Underlying Defendants”) “owned a residential rental property located at 3610 E. Roosevelt Ave., Tacoma, WA 98404” (the “Subject Property”).

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1 3.4 Defendant Merrifield's Complaint alleges at paragraph 3.4 that on June 15,
 2 2020, Defendant Merrifield "was hired by Underlying Defendants to clean out the
 3 crawlspace area of the home and in return, he would be rented the crawlspace for \$350/mo."

4 3.5 Defendant Merrifield's Complaint alleges at paragraph 3.5 that Defendant
 5 Merrifield "was a resident of the [Subject] Property located at 3610 E. Roosevelt Ave.,
 6 Tacoma, WA 98404 and was lawfully upon those premises."

7 3.6 Defendant Merrifield's Complaint alleges at paragraph 3.6 that "shortly after
 8 10:00 PM on the ... evening of 6/15/2020, [Defendant Merrifield] had fallen asleep on a
 9 mattress in the agreed rented crawlspace of the home."

10 3.7 Defendant Merrifield's Complaint alleges at paragraph 3.7 that "[s]hortly
 11 thereafter, in the following early morning hours of the next day, [Merrifield] woke up
 12 trapped in the crawlspace with flames surrounding him."

13 3.8 Defendant Merrifield's Complaint asserts a cause of action for Negligence
 14 against Underlying Defendants, and seeks damages for his damages, which, according to
 15 paragraph 4.11 of the Complaint, include "physical, psychological, and emotional injuries,
 16 loss of enjoyment of life, emotional distress, pain and suffering and other damages that are
 17 currently ongoing and which will be proven at trial."

18 3.9 On February 7, 2022, the court entered an Order of Partial Dismissal of
 19 Angela Porietis.

20 **B. The Policies and Insurance Claim**

21 3.10 Safeco issued a Landlord Protectors Insurance Policy to Defendant Peter
 22 Porietis bearing policy number OH1736238 and providing for a policy period of June 21,
 23 2019, to June 21, 2020 (the "Landlord Policy") , a copy of which is attached as Exhibit "B".
 24 The Landlord Policy specifies a \$500,000 premises liability limit per occurrence and
 25 identifies the "described location" as "3610 E. Roosevelt Ave., Tacoma, WA 98404-4729."

1 3.11 Safeco issued no insurance policy of any kind to Defendant Spruce Real
2 Estate, LLC.

3 3.12 Underlying Defendants Peter Porietis, Angela Porietis,¹ and Spruce Real
4 Estate, LLC tendered defense and indemnity of the Complaint in the Underlying Lawsuit to
5 Safeco.

6 3.13 Safeco agreed to defend Defendant Peter Porietis without reservation and
7 defend Spruce Real Estate, LLC subject to a complete reservation of rights, pursuant to
8 letters dated December 29, 2021, and January 18, 2022, attached as Exhibits “C” and “D”
9 respectively.

10 **IV. COUNT I**

11 **Declaratory Judgment – Homeowners Policy**

12 4.1 Safeco incorporates by reference all allegations set forth in paragraphs 1.1
13 through 3.13 as if fully set forth herein.

14 4.2 The Landlord Policy constitutes a binding and enforceable contract setting
15 forth the rights and obligations of the parties.

16 4.3 An actual and justiciable controversy exists between Safeco and Defendants
17 regarding coverage under the Landlord Policy.

18 4.4 Pursuant to the express terms, conditions, exclusions, and limitations of the
19 Landlord Policy, there is no liability coverage available to Defendant Spruce Real Estate,
20 LLC for the claims and damages alleged in the Complaint.

21 4.5 With respect to Defendant Spruce Real Estate, LLC, the allegations of the
22 Complaint do not trigger the insuring agreement of the Landlord Policy.

23 4.6 The Policy only affords premises liability coverage for an “insured.”
24 Specifically, Coverage L – Premises Liability coverage part under the Landlord Policy

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¹ On February 7, 2022, Angela Porietis was dismissed from the Underlying Lawsuit, and, as a result,
26 Safeco seeks no declaratory relief regarding coverage afforded under the Landlord Policy to her.

1 provides coverage as follows:

2 **COVERAGES**

3 **1. Coverage L – Premises Liability**

4 We cover the ***insured's*** liability for ***bodily injury*** or
5 ***property damage*** caused by an ***occurrence*** arising
6 out of the ownership, maintenance, occupancy or
use of the ***insured location***, not otherwise
excluded.

7 4.7 The Coverage L – Premises Liability coverage part defines “insured” as

8 follows:

9 The following are additions or revisions to the policy
10 definitions with respect to the coverage provided by
this endorsement.

11 **DEFINITIONS**

12 * * *

13 **3. “*Insured*” also means:**

- 14 **a.** you; and
15 **b.** so long as they remain a resident of your
household, the following residents:
16 **(1)** your relatives; and
17 **(2)** any other person under the age of 21 who
is in the care of any person named above.

18 4.8 With respect to the above-quoted definition of “***Insured***,” the Policy defines
19 the term “you” as follows:

20 **DEFINITIONS**

- 21 **1.** Throughout this policy, “you” and “your” refer to
the “named insured” shown in the Declarations
and:
22 **a.** your spouse, if a resident of the same
household; or
23 **b.** your ***domestic partner***, if a resident of the same
household.

“Domestic partner” means a person living as a continuing partner with you and:

- (1) is at least 18 years of age and competent to contract;
 - (2) is not a relative; and
 - (3) shares with you the responsibility for each other's welfare, evidence of which includes:
 - (a) the sharing in the domestic responsibilities for the maintenance of the household; or
 - (b) having joint financial obligations, resources, or assets; or
 - (c) one with whom you have made a declaration of domestic partnership or similar declaration with an employer or government entity.

Domestic partner does not include more than one person, a roommate whether sharing expenses equally or not, or one who pays rent to the named insured.

4.9 Spruce Real Estate, LLC is not an “insured,” as that term is defined in the Policy.

4.10 For these reasons, there is no coverage available to Defendant Spruce Real Estate, LLC under the Landlord Policy for the claims and damages alleged in the Complaint, and Safeco has no duty to defend or indemnify Defendant Spruce Real Estate, LLC in the Underlying Lawsuit.

REQUEST FOR RELIEF

WHEREFORE, Safeco prays for judgment in its favor and against Defendants as follows:

A. Declaratory relief pursuant to the Declaratory Judgments Act, 28 U.S.C. § 2201, that Safeco has no duty to defend or indemnify Defendant Spruce Real Estate, LLC in

1 the Underlying Lawsuit;

2 B. Declaratory relief pursuant to the Declaratory Judgments Act, 28 U.S.C. §
3 2201, that Safeco may withdraw the defense currently being provided to Defendant Spruce
4 Real Estate, LLC in the Underlying Lawsuit; and

5 C. Such other and further relief as the Court deems just and appropriate.

6 DATED: August 3, 2022

7 BULLIVANT HOUSER BAILEY PC

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